

Before the Federal Communications Commission
Washington, D.C. 20554

SEP 15 1997
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
Policies and Rules Concerning Unauthorized)	
Changes of Consumers' Long Distance Carriers)	
)	

Comments of AirTouch Communications, Inc.

AirTouch Communications, Inc. ("AirTouch") hereby submits its comments on the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking dated July 15, 1997.¹ AirTouch Communications is the corporate parent of AirTouch Cellular which provides cellular service including long-distance capabilities in many U.S. markets.

INTRODUCTION

AirTouch fully supports the Commission's efforts to protect consumers from unauthorized changes in their assigned long-distance carriers. Because of robust competition in the CMRS market, AirTouch and other CMRS carriers have strong incentives to protect their customers from unauthorized long-distance carrier changes. In response to the competitive environment of the wireless marketplace, AirTouch cellular customers are allowed to change their long distance provider, and AirTouch actively verifies such changes to ensure that a customer's choice has been authorized.

¹ Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, FCC 97-248, CC Docket No. 94-129 (July 15, 1997) ("Further Notice").

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In crafting the rules that govern interexchange carriers (“IXCs”) and CMRS carriers that provide long-distance services, the Commission should recognize the fundamentally different legal and competitive aspects of the CMRS and wireline markets.² Specifically, the Commission should permit CMRS carriers flexibility to use various verification methods to provide high quality service to their customers. The Commission should not require CMRS carriers to use additional verification procedures for customer-initiated change requests and should permit CMRS carriers to continue using the “welcome package” verification option.

DISCUSSION

Congress and the Commission have previously recognized that in many cases regulation is unnecessary in all cases to protect consumers in the mobile communications market.³ And although Section 258 expands the prohibition on unauthorized changes to “all telecommunications carriers,” it simply requires that carriers comply with the verification procedures developed by the Commission.⁴ Nothing in Section 258 prevents the Commission from developing different regulations for different classes of carriers based on competitive circumstances or other relevant criteria. In this instance, differences in the marketplace and in business incentives justify different regulation of customer long distance carrier changes made by CMRS carriers.

²The Further Notice makes repeated reference to “IXCs” as the intended targets of the proposed regulations. See, e.g., Further Notice at 46 (referring to slamming by “unscrupulous IXCs”). As explained herein, CMRS carriers are not IXCs within the same sense of the term likely intended by the Further Notice.

³“In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act,” Second Report and Order, 9 FCC Rcd 1411 (1994), para. 14.

⁴47 U.S.C. § 258 (providing that “no telecommunications carrier shall submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe”).

A customer's choice of the toll carrier accessed through a CMRS phone is often tied to the customer's choice of that CMRS provider. Section 332(c)(8) of the Communications Act provides that a person engaged in the provision of commercial mobile services, insofar as such a person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services.⁵ Congress recognized that CMRS carriers lack market power and should have the ability to determine whether to offer customers a preselected choice of long-distance carrier. Absence of equal access obligations enables CMRS providers to pass significant savings on to its customers by use of volume discounts and least-cost routing options.

Long-distance service is not a CMRS carriers' primary source of revenue from a given customer. Long distance services, themselves highly competitive, are in CMRS an adjunct to a basic service which is subject to significant competitive pressures. In many cases, the ability to place calls to locations outside of the cellular service area through arrangements with an IXC is a service in which rates are bundled in with the monthly service charges and may be offered at highly competitive rates in order to encourage greater use of airtime.

Consequently, broadband CMRS carriers have absolutely no incentive to "slam" their customers by changing long-distance carriers without proper authorization. That practice would harm the existing carrier-customer relationship for the basic service, risk losing that customer to a competitor, and provide no benefit to the broadband CMRS carrier. In fact, AirTouch carefully

⁵47 U.S.C. § 332(c)(8). The language of Section 332(c)(8) -- "insofar as such person is so engaged" -- makes clear that long-distance service offered by CMRS providers is a commercial mobile service, not a separate interstate, interexchange service. This is also evident from the definitions of commercial mobile service in the Communications Act. See 47 U.S.C. §§153(27); 332(d)(1). Accordingly, the regulatory treatment applicable to CMRS applies to these services. See generally, 47 U.S.C. §§ 332; 152(b).

examines toll carrier change requests in order to protect our cellular customers from unauthorized changes.⁶ Given the level of competition and these business incentives, further regulation of a CMRS carrier's verification practices is unnecessary.

As the Commission recognizes, unnecessary regulation in this area could harm competition and impose excessive administrative burdens on customers and carriers alike.⁷ Where there is no incentive or opportunity for a broadband CMRS carrier to "slam" its customers, eliminating streamlined methods of protecting customers from unauthorized changes is only likely to frustrate customers and create unnecessary burdens. Consequently, AirTouch recommends that the Commission preserve CMRS carriers' flexibility to implement their own verification procedures in response to market incentives.

For example, AirTouch notes that the Commission proposes to require verification procedures to be applied even where a customer makes the first contact with the carrier.⁸ AirTouch believes that customers of CMRS carriers should not be required to take unnecessary steps to process a change in carrier through a customer-initiated telephone call. In some AirTouch markets, customers have been frustrated by the requirement that the customer either wait 14 days, dial an additional number, or submit their request in writing. This has been the case also in the outbound telemarketing context.

⁶AirTouch also permits customers to "freeze" their choice of toll carrier, thereby automatically requiring additional verification procedures to change toll carriers. AirTouch believes that these "PIC freezes" are another lawful way to protect its customers from "slamming" when implemented in the manner described in the Further Notice. See Further Notice, para. 72 (providing, *inter alia*, that customers should be informed about such freezes). Carriers should be allowed the option to implement such "freezes" as their own business discretion dictates.

⁷See, e.g., Further Notice, para. 51 (seeking comment on the costs to consumers of verification requirements).

⁸Further Notice, para. 46.

Certainly, when the customer contacts the company to have a change made, or even with a question about their service, a CMRS carrier's first incentive is properly to be as responsive to that customer as possible. Regulations which stifle this ability where carriers have no incentives to engage in "slamming" are unnecessary and disserve customers. The Commission should allow CMRS carriers to tailor any verification procedures for inbound telemarketing arrangements to business needs.

The Commission also may eliminate the 14-day "welcome package" postcard verification mechanism as a method for complying with the Commission's regulations. The "welcome package" postcard reminds a customer that he/she requested a change, and permits unauthorized change requests to be identified within 14 days before they are executed. The Further Notice states that, while this is a permissible verification method, the line between this option and a prohibited "negative option LOA (letter of agency)" may be blurred, and requests comment on whether the "welcome package" option should be eliminated or revised.⁹

As AirTouch explained in its earlier filing referenced in the Further Notice, the "welcome package" verification method protects consumers because they have already made their choice orally during a telemarketing call and the "welcome package" is additional notice and confirmation. It is distinctly different than a negative-option LOA prohibited by 47 C.F.R. § 64.1150(f). Consequently, the Commission should preserve the "welcome package" option.¹⁰

⁹Further Notice, para 64.

¹⁰If necessary, the Commission could require that a "welcome package" postcard include specific language, such as a reminder to consumers that this card is being mailed to verify an earlier request.

The Further Notice requests comment on the potential effects of eliminating the default aspects of the “welcome package” verification option.¹¹ For customers, this rule change would eliminate the convenience of being able to transact business in one simple step. For AirTouch, it would inhibit our ability to be immediately responsive to customer requests: our customer service representative would be required to direct that customer to call another number, submit their request in writing, or contact a neutral third party. For CMRS carriers, ample incentives already exist to prevent misuse of the “welcome package” in submitting or executing unauthorized carrier changes. Thus, eliminating that option would create costs in excess of the intended consumer protection benefits.

Since CMRS carriers are not subject to equal access requirements, their election to offer customers a complete choice of long-distance carriers is a business decision made to provide customers with a more attractive basic CMRS service. Increasing the costs of offering such a choice, however, may cause some carriers to discontinue offering it. AirTouch is not seeking to weaken protections for consumers -- as noted before, CMRS carriers have competitive incentives to institute protections for their customers. But competitive businesses must also have the flexibility to balance the costs and benefits of different verification procedures depending on customer needs and market conditions.

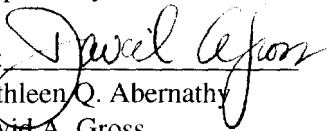
¹¹Further Notice, para. 64.

CONCLUSION

AirTouch respectfully requests that the Commission design its anti-slamming rules to recognize that CMRS toll services are subject to different competitive incentives than other toll services. Both the role of toll revenues in the CMRS business and the level of competition in the broadband CMRS services market adequately protect CMRS customers from unauthorized changes of their chosen toll carrier. Burdensome procedures will reduce rather than enhance customer options. Consequently, the Commission should allow CMRS carriers the flexibility to determine whether verification procedures are needed for customer-initiated calls and to use the "welcome package" verification option.

Respectfully submitted,

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